**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**C.M. No. 7760-C of 2005 and**
**R.S.A. No. 2985 of 2005**
**Date of decision March 8, 2007**

Jagtar Singh

**.....Appellant**

**Versus**

Sukhraj Kaur and others

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE VINEY MITTAL**

Present:- Sh. Premjit Kalia, Advocate
for the appellant.

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**Viney Mittal, J (Oral)**

**C.M. No. 7760-C of 2005**

For the reasons given in the application, the delay in re-filing the appeal is condoned.

**R.S.A. No. 2985 of 2005**

A suit for declaration and separate possession was filed by Sukhraj Kaur. She had claimed her share in the suit property left behind by her father-in-law, Kesar Singh.

The suit was contested by the defendants. They claimed that through a writing dated January 10, 1996 a family settlement had been arrived at between the parties and the plaintiff was compensated qua her share in the joint house between the parties. The learned trial Court decreed the suit filed by the plaintiff holding the parties were entitled to their share as per natural succession. A preliminary decree was passed by the trial Court.

The matter was taken up in appeal by the defendants. The learned first appellate Court reappraised the entire evidence and up held

the decree qua declaration passed by the trial Court but held that partition qua the agricultural land can only be done by the revenue authorities. It was also held by the appellate Court that the residential house between the parties could not be a subject matter of partition but plaintiff shall have a right of residence. Since defendant had failed to prove any writing showing any family settlement between the parties, therefore, it was held that aforesaid property remained joint between the parties.

Sh. Premjit Kalia, learned counsel appearing for the defendant-appellant has brought to my notice that an application has been filed by the defendant-appellant under Order 41 Rule 27 of the Code of Civil Procedure whereby the aforesaid settlement between the parties is sought to be produced on record by way of additional evidence. Learned counsel states that the aforesaid writing was not available to the appellant in the proceedings before the Courts below and as such the compromise had not been taken into consideration.

However, I find that the aforesaid photocopy of the alleged compromise cannot be taken to be admissible per-se. The aforesaid compromise was required to be proved in accordance with law. In view of the aforesaid fact, the said additional evidence cannot be taken into consideration by this Court. Consequently, the application for additional evidence is rejected.

Learned counsel appearing for the defendant-appellant has also argued that during the pendency of the proceedings before the appellate Court, Sukhraj Kaur had re-married and therefore, even the house in question could not have been used by her even for residence in any manner after her re-marriage.

Even the aforesaid fact cannot be taken into consideration. There is nothing on record to show that the plaintiff-respondent Sukhraj Kaur has re-married. In the absence of any evidence a mere argument raised on behalf of the defendant-appellant cannot be accepted.

Nothing has been shown that the findings of fact recorded by the two Courts below suffer from any infirmity or are contrary to the record.

No question of law, much less any substantial question of law, arises in the present appeal.

Dismissed.

**(VINEY MITTAL)**
**JUDGE**

**March 8, 2007**
**archana**